STATE OF KANSAS

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December 18, 1985

ATTORNEY GENERAL OPINION NO. 85- 178

Steve Piper
City Clerk
Marquette, Kansas 67464

Re: Schools -- Organization, Powers and Finances of Boards of Education -- Closing or Changing the Use of School Buildings

Synopsis: Under K.S.A. 1984 Supp. 72-8213, it is a prerequisite to the closing of a school building that a majority of the voters approve such closing in a special election held for that purpose. However, that statute authorizes a school board to change the use of a school building without an election, and does not require that a school board offer in any one building six grades of elementary school, three grades of junior high, and three grades of high school. Additionally, a statute does not constitute an express or implied contract between the State of Kansas and the people of the state. Cited herein: K.S.A. 1984 Supp. 72-8213; L. 1982, Ch. 301, Sec. 3.

* * *

Dear Mr. Piper:

As City Clerk of Marquette, Kansas, and on behalf of that city, you request our opinion concerning K.S.A. 1984 Supp. 72-8213, which sets forth the authority of a school board to close or change the use of a school building. You are particularly concerned with the effect of the 1982 amendment to that statute.

You first inquire whether, prior to the 1982 amendment of the statute, K.S.A. 72-8213 "guaranteed" to the people of Kansas the right to decide whether their school could be closed. The language of the statute at that time provided as follows:

> "The board shall not close any attendance facility that was being operated at the time the unified district was organized if at least three-fourths (3/4) of the territory and at least three-fourths (3/4) of the taxable tangible valuation of the district which formerly owned such building is included in such unified district unless and until a majority of the resident electors within the attendance center of such attendance facility shall give their consent thereto."

The statute's current language, contained in the 1984 Supplement, provides that a school building shall not be closed unless a majority of those voting at an election upon that question are in favor of such closing. K.S.A. 1984 Supp. 72-8213(c)(4)(c).

The language of the statute, both prior to and after 1982, creates a duty on the part of the local school board to submit the question of a school closing to the public. The same language creates a correlative right on the part of the public to vote on that issue. In common terms, it may properly be said that the statute "guarantees" that a school building shall not be closed unless a majority of those voting approve that closing.

You next inquire whether the statute prior to its 1982 amendment "guaranteed" to the people of Kansas that at least three high school grades, three junior high grades, and six elementary grades be operated in one school building. The relevant language of the statute, again prior to 1982, stated:

> "Noting in this section shall be deemed to restrict or limit the authority of any board to change the use of any attendance facility, so long as at least three (3) high-school grades, three (3) junior high school grades, or six (6) elementary school grades are offered in such attendance facility." K.S.A. 72-8213(e). (Emphasis added.)

Under this statute, the school board could change the use of a school building from an elementary school to a junior high offering three grades or to a high school offering three grades, or take any other action which did not reduce the number of grades offered in the building to less than the amount required for the applicable level of education. The statute did not require that the board offer in any one building six grades of elementary school, three grades of junior high, and three grades of high school.

The statute was amended in 1982 to its present language which provides:

> "Nothing in this section shall be deemed to restrict or limit the authority of any board to change the use of any school building, so long as such school building is operated or used for pupil attendance purposes." L. 1982, Ch. 301, Sec. 3(g), now at K.S.A. 1984 Supp. 72-8213(g).

By removing the requirement that a minimum number of grades be offered for each appropriate educational level, the legislature broadened the school board's authority to change the use of a school building. In our opinion, neither the current language, nor the language of the statute prior to 1982 guaranteed to the people of Kansas that at least six elementary grades, three junior high grades, and three high school grades be offered in any one school building.

You next inquire whether the statute, presumably prior to its 1982 amendment, constituted an "implied contract between the State of Kansas and the People of Kansas in regard to closing schools." The law recognizes two types of implied contracts: those impled in fact, and those implied in law, which are also known as "quasi-contracts." Contracts implied in fact arise from facts and circumstances showing mutual intent to contract. Mai v. Youtsey, 231 Kan. 419, 422 (1982); Swanston v. McConnell Air Force Base Fed'l Cred. Union, 8 Kan.App.2d 538, 541 (1983). Contracts implied in law are not true contracts but are obligations imposed for the purpose of doing justice without reference to the intention of the parties. Bucher and Willis Consulting Engineers v. Smith, 7 Kan.App.2d 467, Syl. ¶7 (1982).

Our research has revealed no support for the proposition that a statute of any kind may constitute an implied contract of either type. In our judgment, an implied contract theory,

which is premised upon the absence of express terms, is particularly inapplicable to statutes. It has long been established in this state that one legislature does not have the power to bind another, and that a subsequent legislature may make such changes in existing laws as it deems necessary, provided that those changes are not unconstitutional or impair vested rights. Gilleland v. Schuyler, 9 Kan. 565 (1872); Board of Education of Leavenworth v. Phillips, 67 Kan. 549 (1903). Accordingly, in our opinion it cannot be concluded that K.S.A. 72-8213 constitutes, or at one point in time constituted, an implied contract which is not subject to unilateral change.

Very truly yours,

Robert T. Stephan

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ATTORNEY GENERAL OF KANSAS

Kathryn Gardner

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Assistant Attorney General

RTS:JSS:KG:crw